FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 284 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Shri N.J. Patil, advocate for the Appellants.
Shri V.B. Naik, advocate for the Respondents.

CORAM: A.S. OKA, J.
DATE : 24th August, 2004.

P.C.:-

1. The Courts below have recorded a finding that the suit filed by the Appellant was barred by principles of res-judicata. Reliance was placed by the Courts below on explanation IV to Section 11 of the Code of Civil Procedure, 1908 and courts have come to the conclusion that the reliefs prayed in the present suit and the challenge in the present suit could have been subject matter of the earlier suit filed by the Appellant.

2. Reliance was placed by the counsel appearing for the Appellant on the judgments of the Apex Court reported in (2004)4 SCC. page 389 (Sudhangshu Mohan Deb vs. Niroda Sundari Debidhup & Ors.),

AIR 1993 S.C. page 307 (P.M.C. Kunhiraman Nair vs. C.R. Naganatha Iyer) and AIR 2000 S.C. page 212 (Ajit Chopra vs. Sadhu Ram). However, after perusing the said Judgments, I am of the view that the same will not help the Appellant in any manner. In the earlier suit filed by the Appellant against Respondent No.2, the challenge to the sale transaction effected by Respondent No.2 was on the ground that she had no right, title and interest in the suit property and the challenge was based on the ground that the marriage of Respondent No.2 was not valid. The challenge in the present suit is that Respondent No.2 had no right to transfer the entire property and the challenge is based on the provisions of the Maharashtra Regional and Town Planning Act, 1966. In view of this position, no fault can be found with the approach of the Courts below, if principles of constructive res-judicata were invoked.

3. No substantial question of law arises. Second appeal is dismissed. No order as to costs.

. C.C. expedited.

JUDGE